

of the Taylor and Morrison TED modifications are found at 50 CFR 227.72(e)(4)(iii)(E), and the modified single-grid hard TED is described at 50 CFR 227.72(e)(4)(i)(G)(2)(ii).

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

This proposed rule would establish a registration program that contains a collection-of-information requirement subject to the PRA, namely, registration by vessels fishing in the leatherback conservation zone from Cape Canaveral, FL, to the Virginia-North Carolina border. This collection has been approved by OMB under control number 0648-0267. The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be sent to NMFS and OMB (see ADDRESSES).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have significant economic impact on a substantial number of small entities because closures would occur for only short periods of time in relatively small, specific areas where leatherback abundance is determined to be high, while the rest of the leatherback conservation zone would remain open. Further, TEDs modified to allow the escape of leatherbacks can be made at minimal cost.

The Assistant Administrator for Fisheries, NOAA, (AA) prepared an EA for the interim rule published elsewhere in this **Federal Register** volume and concluded that, with specified mitigation measures, that action will have no significant impact on the human environment. The AA has determined that the EA prepared for the interim rule is applicable to this proposed rule.

The provisions of this proposed rule will have already been in effect pursuant to an interim rule issued by NMFS elsewhere in this **Federal Register** volume.

Dated: May 5, 1995

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, the interim rule amending 50 CFR parts 217, 222, and 227, published elsewhere in this issue, is proposed to be adopted as final.

[FR Doc. 95-11580 Filed 5-9-95; 11:46 am]

BILLING CODE 3510-22-P

50 CFR Part 285

[Docket No. 950426116-5116-01; I.D. 040495D]

RIN 0648-AH76

Atlantic Tuna Fisheries; Quotas and Permit Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; public hearings; request for comments.

SUMMARY: NMFS proposes amendments to the regulations governing the Atlantic tuna fisheries to: Set Atlantic bluefin tuna (ABT) fishing category quotas for the 1995 fishing year; control fishing effort in the ABT General category; limit entry in the ABT Harpoon Boat category; extend vessel and dealer permitting and reporting requirements to all Atlantic tunas fisheries; adjust angler bag limits; establish transferable vessel allocations and a total quota in the purse seine fishery for yellowfin tuna, and make technical changes to facilitate enforcement and improve management efficiency.

The proposed regulatory amendments would address allocation issues in the ABT General and Harpoon Boat categories, and simplify rules applicable to recreational fishing for tunas. The permitting and reporting provisions would enhance data collection and enforcement of catch restrictions in the Atlantic tuna fisheries and enable the United States to collect fishery information needed by the International Commission for the Conservation of Atlantic Tunas (ICCAT) to produce stock assessments. These actions are necessary to begin implementation of the 1993 recommendation of ICCAT regarding fishing effort on yellowfin tuna, and to implement the 1994 recommendation of ICCAT regarding fishing quotas for bluefin tuna, as required by the Atlantic Tunas Convention Act (ATCA). NMFS will hold public hearings to receive comments from fishery participants and

other members of the public regarding these proposed amendments.

DATES: Comments are invited and must be received by June 8, 1995. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of the public hearings.

ADDRESSES: Comments on the proposed rule should be sent to, and copies of supporting documents, including a Supplemental Draft Environmental Impact Statement (SDEIS) and Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA), are available from, Richard B. Stone, Chief, Highly Migratory Species Management Division, Office of Fisheries Conservation and Management (F/CM), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282. Information copies of proposed permit applications and reporting forms may be obtained from NMFS at the above address, NMFS, Northeast Region, Fisheries Management Division, 1 Blackburn Drive, Gloucester, MA 01930-2298, or NMFS, Southeast Region, Fisheries Management Division, 9721 Executive Center Drive, St. Petersburg, FL 33702-2432. Comments regarding the burden-hour estimate or any other aspect of the collection-of-information requirements contained in this rule should be sent to Richard B. Stone and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer). See **SUPPLEMENTARY INFORMATION** for the public hearing locations.

FOR FURTHER INFORMATION CONTACT: Christopher W. Rogers, 301-713-2347; or Kevin B. Foster, 508-281-9260.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under regulations at 50 CFR part 285 issued under the authority of the ATCA. The ATCA authorizes the Secretary of Commerce (Secretary) to implement regulations as may be necessary to carry out the recommendations of ICCAT. The authority to implement ICCAT recommendations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Purpose

Bluefin Tuna: Based on a revised stock assessment, parties to the 1994 meeting of ICCAT adopted a recommendation to increase the annual quota of ABT in the western Atlantic Ocean from 1,995 metric tons (mt) to 2,200 mt. The share allocated to the United States was set at 1,311 mt with the provision that unused quota from 1994 be carried over or overharvest be

subtracted from the 1995 total. This proposed rule would implement that quota recommendation accounting for overharvest and underharvest in each regulatory category.

In addition to the proposed quota allocations, NMFS proposes a number of changes to operations of the ABT Angling, General and Harpoon Boat permit categories. The changes to the regulations pertaining to the Angling category would simplify the regulations, reduce mortality, and reduce information collection burdens. The changes to the regulations pertaining to the General category would lengthen the fishing season by apportioning the total allowable catch into monthly quotas and restricting fishing on certain days. The changes to the regulations pertaining to the Harpoon Boat category would curtail further expansion of fishing effort in this category by imposing a moratorium on new permits.

NMFS has determined that these requirements would bring the United States into compliance with the 1994 ICCAT recommendations pertaining to management of bluefin tuna and would improve economic returns to fishery participants.

Yellowfin Tuna: Parties to the 1993 meeting of ICCAT adopted a recommendation that Contracting Parties restrict the effective level of fishing effort directed at yellowfin tuna to levels exerted in 1992. That recommendation, which this proposed

rule would begin to implement, requires information collection programs to estimate accurately fishing effort exerted by commercial and recreational fisheries. In addition, NMFS is proposing quotas in the purse seine fishery, a catch limit of 10 fish per day in the recreational fishery, a re-specification of the size limit based on a linear measure, and elimination of tolerance of yellowfin tuna below the minimum size. The ICCAT recommendation is based on the need to restrict potential escalation of fishing effort directed at yellowfin tuna, which is a fully exploited stock.

NMFS has determined that these requirements would begin the process of implementing the 1993 ICCAT recommendations pertaining to management of yellowfin tuna.

Fishing Category Quotas

During scoping meetings and the subsequent comment period in 1994, NMFS received numerous comments regarding reallocation of the domestic bluefin tuna quota among gear categories. This rule proposes to maintain the "status quo" method of allocation of the domestic U.S. quota for 1995. However, NMFS will explore other methods for domestic allocation for 1996 and beyond and requests additional comment, particularly on access control and market-based allocation alternatives.

Other methods for domestic allocation include access control alternatives that address overcapitalization. A brief introduction to three access control alternatives is provided in the SDEIS, but these are not considered in detail because NMFS does not intend to implement them in 1995. The three access control alternatives vary widely in operation and effects on the fishery, such as equitability, acceptability, management costs, employment, and overall economic efficiency. NMFS plans to work with fishery participants to research and develop these access control alternatives, together with user group allocation issues, for possible implementation in future years.

The total 1995 quota allocated by ICCAT to the United States is 1,311 mt. Under the proposed allocation scheme, the 76 mt increase over the 1994 U.S. quota of 1,235 mt allocated to the United States would be placed in the Reserve category. Base quotas for all other categories would be maintained at the 1994 base levels. However, quotas would be adjusted to account for 1994 underharvest or overharvest in respective categories (Exhibit 1). The proposed rule would set ABT fishing category quotas for the 1995 fishing year as follows: General category—438 mt; Harpoon Boat category—47 mt; Purse Seine category—301 mt; Angling category—320 mt; Incidental category—129 mt; Inseason Reserve—94 mt.

EXHIBIT 1.—PROPOSED ABT QUOTAS BY FISHING CATEGORY

Permit category	1994 quota	Inseason adjustment to quota	1994 adjusted quota	1994 catch	1994 over/under	1995 adjusted quota
General	531	18	549	642	93	438
Harpoon	53	.....	53	59	6	47
Incidental:	113	.....	113	97	-16	129
Other	4	.....	4	2	-2	6
Longline	109	.....	109	95	-14	123
North	23	10	33	29	-4	23
South	86	-10	76	66	-10	100
Purse Seine	301	.....	301	301	.....	301
Angler:	219	.....	219	118	-101	320
> School	120	.....	120	70	-50	170
School	99	.....	99	48	-51	150
South	46.5	.....	46.5	23.1	-23	70
North	52.5	.....	52.5	24.5	-28	80
Total allocated	1217	18	1235	1217	-18	1235
Reserve	18	-18	.....	.....	.....	94
Total US ICCAT	1235	.....	1235	1217	-18	1329

Note: Overharvest/underharvest in 1994 is applied to 1994 base quotas to calculate 1995 adjusted quotas. The total 14 mt underharvest in the longline category was applied to the base quota for the southern subcategory to compensate for the 1994 inseason transfer.

In addition, this proposed rule would establish monthly quotas for the ABT General category to address concerns expressed to NMFS regarding allocation

of fishing opportunities and to allow for a late season fishery. Many proposals for lengthening the season were received by NMFS during scoping meetings held in

September, 1994. In essence, these proposals would apportion the total catch into monthly quotas based on historical records of landings. NMFS

proposes to apportion the quota based on the following percentages: 20 percent in June/July; 35 percent in August; 35 percent in September; and 10 percent in October. Of the 438 mt total, 88 mt would be available in the period beginning June 1 and ending July 31; 153 mt would be available in the period beginning August 1 and ending August 31; 153 mt would be available in the period beginning September 1 and ending September 30; and 44 mt would be available beginning October 1. Attainment of quota in any period would result in a closure until the subsequent period, whereupon any underharvest or overharvest would be carried over to the subsequent period to adjust the base quota for that period. Such inseason closures would be published in the **Federal Register** and announced through local media and over NOAA weather radio.

This proposed rule would also restrict allowable fishing days for vessels permitted in the ABT General category. Industry groups have proposed daily closures as a means of lengthening the fishing season. Persons aboard vessels permitted in the General category would not be allowed to fish for, catch, retain, or land ABT on Sundays and Wednesdays, each week. This management measure would serve to prevent overharvest of quota in any period and is tied, in part, to market closures in Japan (the major export market) to minimize potential negative economic consequences to U.S. fishermen.

The proposed effort controls would improve distribution of fishing opportunities without increasing ABT mortality. Accordingly, there would be no additional biological impacts resulting from this proposed action.

ABT Permit and Reporting Requirements

This proposed rule would impose a moratorium, effective May 15, 1994, on permits issued for vessels in the ABT Harpoon Boat category, and establish landings and vessel characteristics as qualifying criteria for this category. This management measure was proposed by vessel owners in this category as a means of preserving this traditional fishery. Given the small quota allocated to this category, limited entry would curtail further expansion of fishing effort.

Although NMFS published a control date of September 1, 1994, pertaining to access to the Atlantic tuna fisheries, vessels issued permits in the Harpoon category as of the control date were required to declare participation prior to May 15, 1994. For this reason NMFS

proposes to use the earlier date as a cutoff for participation. In addition, NMFS proposes further to restrict permits to vessels active in the fishery, as evidenced by landing at least one ABT over the period 1990 through 1994, and to vessels capable of participating in this weather-sensitive offshore fishery, as evidenced by being greater than 25 feet in length.

NMFS records indicate that only 53 vessels of the 118 vessels currently permitted in the Harpoon Boat category would qualify under these vessel characteristic and participation criteria. As proposed, appeals would be considered only in the event NMFS records contain erroneous information about the length of the vessel or its associated catch history. Vessel owners excluded from the Harpoon Boat category based on erroneous information could appeal in writing to the Regional Director, stating the reason for the appeal and providing documented evidence of the vessel characteristics and/or catch history.

NMFS also proposes to consolidate ABT Angling and Incidental Rod & Reel Category permits. Prior to establishing the Angling category permit, NMFS had established a permit to allow anglers to take one large medium or giant ABT per year, provided NMFS is notified when the fish is landed, and provided the fish is not sold. The proposed change in requirements eliminates the need to obtain two separate permits in the recreational ABT fishery. However, notification requirements for large medium and giant ABT would still apply to anglers, as would the one per year limit and the prohibition of sale.

In addition, NMFS proposes to preclude issuance of both ABT General and Angling category permits to a single vessel. Industry participants have communicated concerns to NMFS that permitting vessels in both the Angling and General categories facilitates violations of bag limits and results in additional mortality of tuna, in that vessels may continue to fish after the daily commercial trip limit is reached with the intent to capture a more valuable fish or transfer illegal fish to another vessel. Allowing issuance of only a General or Angling category permit to a single vessel would reduce bluefin discard mortality. Persons aboard General category vessels would be required to cease fishing once the daily limit is attained. Persons aboard Angling category vessels registered in the NMFS cooperative tagging program would be authorized to continue catch and release fishing once applicable daily limits are attained.

The proposed permit requirements would improve distribution of fishing opportunities and should decrease ABT mortality.

Private and Party/Charter Vessel Permit Requirements

This proposed rule would amend the ABT Party/Charter permit regulations to allow for either recreational or commercial fishing, under specific conditions. Operators of partyboats and charter vessels have expressed concerns to NMFS that efforts to preclude vessels from fishing in both a recreational and commercial capacity would disproportionately impact their sector. Many operators indicated that they fish commercially when not engaged in fee fishing with clients. The proposed regulations would allow vessels in the Party/Charter categories to fish commercially, provided they are not operating as a partyboat or charter vessel on that trip. Charter vessels with more than three persons aboard and partyboats with more persons aboard than the crew requirements listed on the Coast Guard certificate would be deemed to be on a fee-fishing trip, and anglers on board would be restricted to the applicable bag limits.

This proposed rule would also extend the Party/Charter vessel permit requirement to all other Atlantic tunas fisheries. In response to the ICCAT recommendation that contracting parties restrict effort on yellowfin tuna, NMFS presented available data on the yellowfin tuna recreational fishery at scoping meetings in September 1994. NMFS acknowledges that recreational data are incomplete with regard to large pelagics other than bluefin tuna. Given the adverse public reaction to the incomplete data and subsequent receipt of a petition to take no further action that affects recreational tuna fisheries until NMFS can accurately document the catch of this sector, it is clear that NMFS must implement a comprehensive recreational fishing reporting program for all Atlantic tunas.

To initiate the process of implementing the ICCAT recommendation, NMFS proposes permits for Party/Charter vessels, effective September 15, 1995, to assist in developing a sampling frame and survey design. Party/Charter vessels permitted in the bluefin tuna Angling category would be exempt from this requirement to prevent issuance of redundant permits. Effective January 1, 1996, owners of private vessels would also be required to obtain permits to fish for, retain and land any Atlantic tuna.

The proposed permit requirements would improve distribution of fishing

opportunities by separating commercial and recreational activities but would allow for income-dependent groups such as charter operators to continue making a living in the fishery. These proposed requirements should have no incremental effect on ABT mortality.

Purse Seine Permit, Quota and Reporting Requirements

This proposed rule would extend the vessel permit requirements for purse seine vessels to all Atlantic tunas fisheries and restrict eligibility to purse seine vessels currently permitted for ABT. Although NMFS has by regulation restricted entry to the purse seine fishery for ABT since 1982, the regulations regarding allowable purse seine fishing for other Atlantic tunas have not been explicit. However, the 1982 purse seine ABT quota was allocated as bycatch only, to be taken incidental to purse seine fishing for yellowfin and skipjack tuna. Currently, regulations preclude any purse seine operator who has transferred a directed fishing ABT allocation to another purse seine vessel from using purse seines in any fishery in which ABT might be incidentally taken. While current regulations imply that fishing for Atlantic tunas with purse seines is restricted to vessels with ABT allocations, the proposed regulations would explicitly limit purse seine fishing for Atlantic tunas to vessels permitted in the ABT Purse Seine category and which have reported yellowfin landings to NMFS over the period 1989 through 1993.

Also, this proposed rule would establish a 350 mt purse seine quota for yellowfin tuna. While it is essential that NMFS document the full extent of U.S. yellowfin tuna fisheries prior to proposing rules to implement the ICCAT recommendation, information on the purse seine fishery for yellowfin tuna is complete. Although the purse seine fishery is the only segment of the Atlantic yellowfin tuna fishery for which a quota is proposed at this time, NMFS would implement quotas, or other methods of effort (catch) control, in other fishery sectors (e.g., longline, rod and reel) as complete information on effort is compiled.

The purse seine quota would be allocated in equal shares to all eligible purse seine vessels requesting such allocation. This proposed total quota was derived from the five year average total catch over the period 1989–93, and corresponds approximately to the 1992 catch of 376 mt.

As proposed, individual purse seine allocations would be transferable, in whole, to any other vessel permitted in

the Atlantic tunas fisheries, including vessels other than purse seine vessels. Such transferability would enable a given level of catch (removal from the stock) to be landed by that segment of the industry, recreational or commercial, which obtains the highest value for the tuna. In the event a purse seine vessel transfers its ABT allocation, the vessel's yellowfin allocation, if applicable, also would be transferred or forfeited.

In addition, this proposed rule would require purse seine hailing/reporting for all trips in which Atlantic tunas are expected to be taken either as a directed fishing allocation or as bycatch.

For the most part, the proposed purse seine requirements only codify existing fishing practices in response to the ICCAT recommendations and domestic management objectives. These measures should have no incremental effect on mortality of Atlantic tunas.

Commercial Use Permits

In response to the ICCAT recommendation that contracting parties restrict effort on yellowfin tuna, NMFS must collect complete catch and landings statistics for the yellowfin fisheries. This proposed rule would require vessel permits for operators engaging in sale of Atlantic tunas (exempting swordfish/shark/bluefin tuna permittees) and would require dealer permits for the purchase of Atlantic tunas (exempting current swordfish/shark/bluefin permittees). Much information on yellowfin tuna fisheries is collected through existing logbooks and dealer reports for the ABT, swordfish and shark fisheries. However, NMFS believes that all fishermen and dealers active in yellowfin tuna fisheries may not be covered under the existing reporting programs.

The proposed permit requirements would improve NMFS' ability to document participation in the tuna fisheries and would have no effect on mortality of Atlantic tunas.

ABT Daily Reports

This proposed rule would replace the daily fax reporting requirement for ABT dealers with a phone-in report via an interactive voice response system (IVRS). The IVRS would improve quota monitoring because data would be entered electronically and directly by ABT dealers. Real-time data entry is essential to prevent quota overages in ABT quota categories. These revised reporting requirements would also facilitate monitoring of proposed monthly quotas in the ABT General category and would reduce the adverse impacts of subtracting quota overages

from subsequent periods. The proposed permit requirements would have no effect on mortality of Atlantic tunas.

Angling Category Bag Limits

NMFS proposes to simplify ABT angling category bag limits. Currently, bag limits are complex and vary depending on size categories of ABT and whether anglers are aboard a private vessel or a party/charter vessel. These bag limits were intended to maximize fishing opportunities, lengthen the fishing season, and reduce fishing mortality on particular age classes of fish. In application, the bag limits, and adjustments thereto necessary to reflect changing abundance of individual year classes, are difficult to communicate effectively to both anglers and enforcement personnel.

For these reasons, NMFS proposes to simplify ABT bag limits as follows: each angler aboard a vessel permitted in the Angling or Party/Charter category would be authorized to retain and land a maximum of two ABT per trip from among the school, large school, or small medium size classes.

NMFS also proposes to implement a 10 fish per angler catch limit for yellowfin tuna. This measure is necessary to reduce waste and maximize fishing opportunities as NMFS begins to implement the ICCAT recommendation to limit effective fishing effort on yellowfin tuna. Vessel owners or operators who sell yellowfin and consequently do not wish to be bound by the angler catch limits, could apply for commercial fishing permits.

Yellowfin and Bigeye Tuna Size Limits

This proposed rule would re-specify yellowfin and bigeye tuna minimum size limits as a linear measure of 22 inches (56 cm) according to the curved measurement method. Currently, the ICCAT recommendation on minimum sizes for these species is expressed as 3.2 kg (7 lb). It is more practical to take length rather than weight measurements at-sea, and this change would reduce handling of fish to be released. This measure should better enable release of small yellowfin and bigeye tuna in a manner that will promote survival. NMFS also proposes to eliminate the tolerance of undersized yellowfin and bigeye tuna to require release of small fish and to facilitate enforcement.

Technical Amendments

A number of technical amendments to the regulations are proposed to facilitate enforcement, promote compliance and/or increase management efficiency. In section 285.1, letters of exemption from regulations for the purpose of scientific

research would be issued only by the Director, Office of Fisheries Conservation and Management. This is necessary to provide NMFS and Coast Guard enforcement personnel with a single point of contact regarding conditions of exemption from regulations otherwise applicable to the parties conducting scientific research.

Another proposed technical amendment would prohibit close approaches by purse seine vessels to other vessels engaged in recreational or commercial fishing for Atlantic tunas. Current regulations prohibit all vessels other than purse seine vessels from approaching within 100 yards of the cork line of a purse seine. The proposed amendment would make the requirement reciprocal by prohibiting purse seine vessels from approaching within 100 yards of other vessels engaged in recreational or commercial fishing.

NMFS also proposes to amend the 10 percent bycatch limit for large medium ABT applicable to purse seine vessels from a per trip limit to a per season limit. ABT tend to segregate into schools of distinct age classes. While operators of these vessels target giant ABT and set purse seines accordingly, some captured fish inevitably fall into the large medium size class. The 10 percent bycatch allowance reduces waste of fish that would otherwise be discarded dead, and limits ABT mortality since retained large medium fish are counted against the purse seine vessel allocation. The proposed change would further reduce waste by allowing flexibility in the bycatch limit as applied to individual trips.

NMFS also proposes to add definitions for "bandit gear" (downriggers), fixed gear, rod and reel gear and trap, and to clarify the use of these gear types in the ABT fisheries. NMFS has learned that some General category vessels have used bandit gear to fish for ABT for a number of years. Under the current regulations, this gear is prohibited because it does not fit the definition of handlines. By specifying authorized gear according to existing gear definitions, NMFS unintentionally prohibited bandit gear. The proposed change would define the gear type and add it to the listing of authorized gear for the Atlantic tuna fisheries.

Finally, NMFS proposes to amend the instructions on measurement of tunas to replace the phrase "tip of the snout" with "tip of the upper jaw." This is necessary to clarify the proper method of measuring the total length of tunas.

Regulations Affecting Incidental Catch

Although NMFS is not currently proposing changes to regulations affecting the Incidental category landings requirements, NMFS does request additional comment on the division of quota and specification of landings requirements affecting the northern and southern subcategories.

NMFS has received numerous written comments that the landings requirements applicable in the northern subcategory cannot be met by vessels in the shark longline fisheries operating off of North Carolina in the winter months, due to the trip limits in effect under the shark fishery management plan. Participants in this winter shark fishery have noted that the ABT and shark regulations, taken together, force discarding of ABT. These fishermen have requested an allowance to land and market fish which would otherwise be discarded dead, thus increasing boat revenues without contributing to additional ABT mortality.

NMFS believes a review of the ABT incidental catch regulations is needed, including division of the quotas, position of the dividing line between the northern and southern subcategories, and landing criteria applicable to each management area. NMFS therefore requests specific comments on ways to reduce incidental mortality of ABT while allowing for commercial use of unavoidable bycatch.

Locations of Public Hearings

The public hearing schedule is as follows:

Tuesday, May 23, 1995, Portland, ME, 6-10 p.m.

Holiday Inn, 81 Riverside Street,
Portland, ME 04103

Wednesday, May 24, 1995, Portsmouth, NH, 6-10 p.m.

City Hall Council Chamber, One Junkins
Avenue, Portsmouth, NH 03801

Thursday, May 25, 1995, Plymouth, MA, 6-10 p.m.

Plymouth North High School, Obery
Street, Plymouth, MA 02360

Friday, May 26, 1995, Tom's River, NJ, 6-10 p.m.

Holiday Inn, 290 Highway 37E, Tom's
River, NJ 08753

Tuesday, May 23, 1995, Ocean City, MD, 6-10 p.m.

City Hall Council Chambers, 3rd Street
and Baltimore Ave., Ocean City, MD
21842

Wednesday, May 24, 1995, Silver Spring, MD, 2-5:30 p.m.

NOAA Building 2, Room 2358, 1325
East-West Highway, Silver Spring,
MD 20910

Wednesday, May 24, 1995, Norfolk, VA, 6-10 p.m.

Quality Inn Lake Wright Convention
Center, 6280 Northampton Blvd.,
Norfolk, VA 23502

Thursday, May 25, 1995, Manteo, NC, 6-10 p.m.

North Carolina Aquarium, Airport Rd.,
Manteo, NC 27954

Monday, May 22, 1995, New Orleans, LA, 6-10 p.m.

Quality Inn Midtown, 3900 Tulane
Avenue, New Orleans, LA 70119

Tuesday, May 23, 1995, Panama City, FL, 6-10 p.m.

Best Western Bayside Inn, 711 W. Beach
Drive, Panama City, FL 32401

Wednesday, May 24, 1994, Madeira Beach, FL, 6-10 p.m.,

City Hall, 300 Municipal Drive, Madeira
Beach, FL 33708

Thursday, May 25, 1995, Deerfield Beach, FL, 6-10 p.m.

The Paramount, 2901 N. Federal
Highway, Boca Raton, FL 33431

Friday, May 26, 1995, Corpus Christi, TX, 6-10 p.m.

Sandy Shores Beach Hotel/Aquarium
Village, 3200 Surfside, Corpus Christi,
TX 78408

Saturday, May 27, 1995, Port Arthur, TX, 6-10 p.m.

Best Western Airport Inn, 200 Memorial
Highway 69, Port Arthur, TX 77627

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Richard B. Stone by May 16, 1995 (see ADDRESSES).

Classification

This proposed rule is published under the authority of the ATCA, 16 U.S.C. 971 et seq. Preliminarily, the AA has determined that the regulations contained in this proposed rule are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic tuna fisheries. NMFS prepared a SDEIS for this proposed rule; a notice of availability was published on March 17, 1994 (60 FR 14432). In contrast to the bluefin tuna DEIS published in April, 1994, all of the quota levels

examined result in increases in the spawning and total biomass of bluefin tuna. This is primarily the result of a revised stock assessment for western Atlantic bluefin tuna that has resulted in a more optimistic prognosis for the stock. However, the range of quotas examined herein produces marked differences in the rate of stock rebuilding. Domestic allocations also have an effect on the rate of rebuilding. For a given total quota, large allocations to the small fish fishery are projected to result in somewhat slower rates of stock rebuilding; however, the net economic benefits from the small fish fisheries are substantial.

NMFS prepared an initial regulatory flexibility analysis (IRFA), as part of the Regulatory Impact Review (RIR), which describes the impact this proposed rule would have on small entities, if adopted. The RIR/IRFA indicates that General category permit holders (81 percent of commercial vessels landing at least one bluefin in 1994) would face a reduction of gross revenues of approximately 18 percent due to the reduction in overall quota relative to 1994. Copies of the RIR/IRFA are available from NMFS (see ADDRESSES). This proposed rule has been determined to be not significant for purposes of E.O. 12866.

This proposed rule contains new and revised collection-of-information requirements subject to review under the Paperwork Reduction Act. It modifies requirements that were approved by the Office of Management and Budget (OMB) under control numbers 0648-0202 and 0648-0239 and restates requirements that were approved by OMB under control number 0648-0168.

On an incremental basis, approximately 1,000 fishing vessel owners and 10 fish dealers would be affected by the proposed permitting and reporting requirements for sale of Atlantic tunas. Approximately 300 ABT dealers would be affected by the proposed IVRS reporting requirements.

The public reporting burden for completing an application for a Federal fishing permit for vessel owners is estimated at 0.50 hours (30 minutes) per response for initial applications and 0.25 hours (15 minutes) per response for renewals. The public reporting burden for completing an application for a Federal permit for tuna dealers is estimated at 0.08 hours (5 minutes) per response. The public reporting burden for these dealers for collection of information on dealer reports is estimated at 0.08 hours (5 minutes) per response for the phone-in (IVRS) daily dealer reports, at 0.05 hours (2.5

minutes) per response for the written daily dealer reports, at 0.55 hours (33 minutes) per response for the biweekly dealer reports. The public reporting burden for completing a vessel log by vessel owners is estimated at 0.10 hours (6 minutes) per day and 0.10 hours (6 minutes) per notification of fish transfer.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: May 8, 1995.

Henry R. Beasley,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 285 is proposed to be amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.1, paragraph (c) is revised to read as follows:

§ 285.1 Purpose and scope.

(c) This part does not apply to any person or vessel authorized by the Commission, the Director, or any state upon approval by the Director, to engage in fishing for research purposes.

3. In § 285.2, the definition of "Center Director" is removed, definitions of "Bandit gear", "Fixed gear", "Rod and reel", "Trap" and "Vessel Length" are added, in alphabetical order, and the definitions of "Charterboat", "Curved fork length", "Party boat" and "Straight fork length" are revised to read as follows:

§ 285.2 Definitions.

Bandit gear (downrigger) means vertical hook-and-line gear with rods attached to a vessel, with no more than 2 hooks per line and with line retrieved by manual, electric, or hydraulic reels.

Charter boat means a vessel less than 100 gross tons (90.8 metric tons) that meets the requirements of the Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a permit issued under this part is deemed to be operating as a charter when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

Curved fork length means a measurement of the length of Atlantic bluefin tuna taken in a line tracing the contour of the body along the middle of the lateral surface from the tip of the upper jaw to the fork of the tail.

Fixed gear means stationary, anchored non-trawl gear.

Partyboat (headboat) means a vessel that holds a valid Certificate of Inspection issued by the Coast Guard to carry passengers for hire. A partyboat with a permit issued under this part is deemed to be operating as a partyboat when it carries a passenger who pays a fee or when there are more persons aboard than the number of crew specified in the vessel's Certificate of Inspection.

Rod and reel means a hand-held (includes rod holder) fishing rod with a manually operated reel attached.

Straight fork length means a measurement of the length of Atlantic bluefin tuna taken in a straight line along the middle of the lateral surface from a line perpendicular to the tip of the upper jaw to a line perpendicular to the fork of the tail.

Trap means a pound net, weir or gill net that is maintained and operated at a fixed location.

Vessel length means the length listed on the vessel's U.S. Coast Guard Certificate of Documentaiton or Certificate of Number.

4. In § 285.3, paragraphs (j) and (k) are revised, and paragraphs (q) and (r) are added to read as follows:

§ 285.3 Prohibitions.

(j) For any person on board a vessel subject to the jurisdiction of the United States to fish for or catch any species of Atlantic tuna with gear that is not authorized under § 285.21(b) or § 285.50, or to retain or land Atlantic

tunas taken with unauthorized gear, unless authorized under § 285.7.

(k) For any person to possess any Atlantic tuna on board a vessel subject to the jurisdiction of the United States that has gear on board that is not authorized under § 285.21(b) or § 285.50, unless authorized under § 285.7.

* * * * *

(q) Purchase, receive, or transfer for commercial purposes any Atlantic tunas if such were not landed by owners or operators of vessels permitted to sell tunas under this part, or if without a valid dealer permit issued under this part.

(r) Sell, offer for sale, or transfer for commercial purposes any Atlantic tunas if not landed by owners or operators of vessels permitted to do so under this part or to any person or vessel without a valid dealer permit issued under this part.

5. Section 285.9 is revised to read as follows:

§ 285.9 Commercial activity.

(a) Sale of Atlantic tunas is restricted to fish landed by owners or operators of vessels permitted under § 285.21 or § 285.52. Owners or operators of vessels permitted in the Atlantic shark fishery (50 CFR part 678) or the Atlantic swordfish fishery (50 CFR part 630) are exempt from the requirements of this section.

(b) Purchase of Atlantic tunas is restricted to dealers permitted under § 285.28 or § 285.54. Dealers permitted in the Atlantic shark fishery (50 CFR part 678) or the Atlantic swordfish fishery (50 CFR part 630) are exempt from the requirements of this section.

6. In § 285.20, paragraphs (a)(1)(i) and (b)(3) are revised to read as follows:

§ 285.20 Fishing seasons.

(a) * * *

(1) * * *

(i) For anglers fishing for Atlantic bluefin tuna under the quota specified in § 285.22(d);

* * * * *

(b) * * *

(3) A vessel permitted in the Purse Seine category may fish under the bluefin tuna quota specified in § 285.22(c), or in fisheries for Atlantic yellowfin or skipjack tuna where bluefin tuna might be taken as bycatch, only until the allocation of bluefin tuna assigned or transferred under § 285.25(d) to that vessel is reached. Upon reaching its individual vessel allocation of Atlantic bluefin tuna, a purse seine vessel will be deemed to have been given notice that fisheries for

any Atlantic tunas are closed to that vessel.

* * * * *

7. In § 285.21, paragraphs (a), (b), the heading and first sentence in paragraph (c), and paragraphs (h), (i) and (m) are revised and paragraph (n) is added to read as follows:

§ 285.21 Vessel permits.

(a) *Permit requirements.* Each vessel that fishes for, or takes, Atlantic bluefin tuna must have on board a valid permit issued under this section.

(b) *Categories of permits.* Upon submission of a complete and valid application pursuant to paragraph (c) of this section, the Regional Director will issue to each qualifying vessel a permit for only one of the following categories: General, Party/Charter, Angling, Harpoon Boat, Purse Seine, or Incidental Catch. A permitted vessel is entitled to fish for Atlantic bluefin tuna only under the quota for the category in which it is permitted, except that catch of anglers aboard Party/Charter vessels will be counted against the Angling category when the vessel is operating as a charter vessel or partyboat and will be counted against the General category when the vessel is not operating as a charter vessel or partyboat. A vessel must use gear appropriate to the category for which it is permitted:

(1) General—rod and reel, handline, harpoon, bandit gear

(2) Party/Charter—rod and reel, handline

(3) Angling—rod and reel, handline

(4) Harpoon Boat—harpoon

(5) Purse Seine—purse seine nets

(6) Incidental Catch—purse seine nets, fixed gear, traps, longlines.

(c) *Application procedure.* Permits issued under this section must be renewed upon expiration. * * *

* * * * *

(h) *Transfer.* A permit issued under this section, except in the case of harpoon boat and purse seine permits as allowed under paragraph (m) of this section, is not transferable or assignable to another vessel or owner; it is valid only for the vessel and owner to which it is issued.

(i) *Display.* A permit issued under this section must be carried on board the vessel at all times. The permit must be displayed for inspection upon request of any authorized officer or any employee of NMFS designated by the Regional Director for such purpose. Upon sale of any large medium or giant Atlantic bluefin tuna, the vessel permit must be

presented for inspection to the dealer completing the landing card.

* * * * *

(m) *Closed categories.* (1) For 1995, The Regional Director will issue permits to catch and retain Atlantic bluefin tuna under § 285.22(b) only to current owners of those Harpoon Boat category vessels, or their replacements, that were issued permits under this subpart prior to May 15, 1994, that are a minimum of 25 ft (7.6 m) in length, and that have documented landings of Atlantic bluefin tuna during the period 1990 through 1994. The Regional Director will not issue a permit to take Atlantic bluefin tuna under this subpart to any vessel that was replaced with another vessel and retired from the Harpoon Boat fishery during the period 1990 through 1994, unless that vessel is replacing another vessel being retired from the fishery. In years subsequent to 1995, the Regional Director will issue permits to catch and retain Atlantic bluefin tuna only to owners of those Harpoon Boat category vessels, or their replacements, that were issued permits under this subpart in 1995.

(2) The Regional Director will issue permits to catch and retain Atlantic bluefin tuna under § 285.22(c) only to current owners of those purse seine vessels, or their replacements, that were granted allocations under this subpart and landed Atlantic bluefin tuna in the fishery for Atlantic bluefin tuna during the period 1980 through 1982. The Regional Director will not issue a permit to take Atlantic bluefin tuna under this subpart to any vessel that was replaced with another vessel and retired from the purse seine fishery during the period 1980 through 1982, unless that vessel is replacing another vessel being retired from the fishery.

(n) *Appeal of denial of permit.* (1) Any applicant denied a moratorium permit under paragraph (m) may appeal to the Regional Director within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Director erred in concluding that the vessel did not meet the criteria in paragraph (m) of this section. The appeal shall set forth the basis for the applicant's belief that the Regional Director erred in his decision.

(2) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Director.

(3) The decision on the appeal by the Regional Director is the final decision of the Department of Commerce.

8. In § 285.22, paragraphs (a), (b), (d), (e), the heading and first sentence of

paragraph (f), introductory text and paragraph (h) are revised to read as follows:

§ 285.22 Quotas.

* * * * *

(a) *General*. The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the General category under § 285.21(b) is 438 mt, of which 88 mt are available in the period beginning June 1 and ending July 31; 153 mt are available in the period beginning August 1 and ending August 31; 153 mt are available in the period beginning September 1 and ending September 30; and 44 mt are available beginning October 1. On the basis of the statistics referenced at § 285.20(b)(1), the Assistant Administrator will project a date when the catch of Atlantic bluefin tuna will equal the available quota in any period, and will publish a notification in the **Federal Register** stating that fishing for, retaining, possessing, or landing Atlantic bluefin tuna under the early-season quota must cease on that date at a specified hour, and not recommence until opening of the subsequent quota period, whereupon a quota equal to the difference between the quota for that period and the estimated overharvest or underharvest prior to that period will become available.

(b) *Harpoon Boat*. The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the Harpoon Boat category under § 285.21(b) is 47 mt.

* * * * *

(d) *Angling*. The total annual amount of Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by anglers is 320 mt. No more than 150 mt of this quota may be school Atlantic bluefin tuna. The quota for school tuna is further subdivided as follows:

(1) 70 mt of school Atlantic bluefin tuna may be caught, retained, possessed, or landed south of 38°47' N. lat.

(2) 80 mt of school Atlantic bluefin tuna may be caught, retained, possessed, or landed north of 38°47' N. lat.

(e) *Incidental*. The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed, or landed in the regulatory area by vessels permitted in the Incidental Catch category under § 285.21(b) is 129 mt. This quota is further subdivided as follows:

(1) 123 mt for longline vessels. No more than 100 mt may be caught,

retained, possessed, or landed in the area south of 34°00' N. lat.

(2) For vessels fishing under § 285.23 (a) and (b), 6 mt may be caught, retained, possessed, or landed in the regulatory area.

(f) *Inseason adjustment amount*. The total amount of Atlantic bluefin tuna that will be held in reserve for inseason adjustments is 94 mt. * * *

* * * * *

(h) If the Assistant Administrator determines, based on landing statistics and other available information, that an annual quota in any category, or as appropriate, subcategory, has been exceeded or has not been reached, the Assistant Administrator will subtract the overage from or add the underage to that quota for the following year; provided that the total of the adjusted quotas and the reserve is consistent with a recommendation of the Commission regarding country quotas. The Assistant Administrator will publish any amounts to be subtracted or added and the basis for the quota reductions or increases in the **Federal Register**.

* * * * *

9. In § 285.23, paragraphs (a) and (b) are revised, paragraph (d) is removed, and paragraph (e) is redesignated as paragraph (d) and revised to read as follows:

§ 285.23 Incidental catch.

(a) *Herring, mackerel, and menhaden purse seine vessels and vessels using fixed gear other than longlines or traps*. Subject to the quotas in § 285.22, any person operating a vessel fishing with these types of gear principally for species of fish other than tuna and possessing an Incidental Catch permit issued under § 285.21 may retain, during any fishing trip, large medium and giant Atlantic bluefin tuna, provided that the total amount of Atlantic bluefin tuna taken does not exceed 2 percent, by weight, of all other fish aboard the vessel at the end of each fishing trip.

(b) *Traps*. Subject to the quotas in § 285.22, any person operating a vessel possessing an Incidental Catch permit issued under § 285.21 that catches Atlantic bluefin tuna incidentally while fishing with traps, may retain large medium and giant Atlantic bluefin tuna, provided that such tuna do not exceed 2 percent, by weight, of the total amount of all other species caught within the preceding 30-day period.

* * * * *

(d) *Purse Seine*. Vessels in the Purse Seine category fishing for Atlantic yellowfin or skipjack tuna are allowed a 1-percent per trip (by weight)

incidental take of bluefin less than the large medium size class. Any landings of these incidental catches may not be sold and will be counted against the Purse Seine category quota.

10. In § 285.24, paragraphs (a), (c) and (d) are revised and paragraph (e) is revised to read as follows:

§ 285.24 Catch limits.

(a) *General category*. (1) From June 1, operators of vessels permitted in the General category under § 285.21 may catch and land only one large medium or giant Atlantic bluefin tuna per day per vessel, except that operators of such vessels may not fish for, catch, land, or possess any Atlantic bluefin tuna from 0001 hours to 2359 hours on Sunday and Wednesday each week. Operators of vessels permitted in the General category may possess large medium and giant Atlantic bluefin tuna in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit in effect on that day.

(2) The Assistant Administrator may increase or reduce the catch limit over a range from zero to a maximum of three large medium or giant Atlantic bluefin tuna per day per vessel based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota. The Assistant Administrator will publish a notice in the **Federal Register** of any adjustment in the allowable daily catch limit made under this paragraph. Other than fishery closures pursuant to attainment of quotas in any period, such notice shall be published at least 7 calendar days prior to a change in daily catch limit becoming effective.

* * * * *

(c) *Purse Seine category*. Vessels permitted in the Purse Seine category may catch large medium bluefin tuna, provided that the total annual amount of large medium bluefin landed does not exceed 10 percent by weight of the total amount of giant Atlantic bluefin tuna allocated to that vessel for that fishing season.

(d) *Angling category*. (1) Each angler aboard a vessel permitted in the Angling category may catch and retain each day no more than two Atlantic bluefin tuna from the school, large school and small medium size classes. Anglers may not retain young school Atlantic bluefin tuna.

(2) The Assistant Administrator may increase or reduce the per angler bag limit for bluefin tuna or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit based

on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota spread over the longest possible period of time. The Assistant Administrator will publish a notice in the **Federal Register** of any adjustment in the allowable daily catch limit made under this paragraph. Other than fishery closures pursuant to attainment of quotas in any period, such notice shall be published at least 7 calendar days prior to a change in daily catch limit becoming effective.

(3) In addition to the daily catch limit for school, large school and small medium bluefin tuna, an operator of a vessel issued a permit for the Angling category may catch and retain annually one large medium or giant Atlantic bluefin tuna, to be counted against the Angling category quota specified in § 285.22. The permit holder must report to the nearest NMFS enforcement office within 24 hours of landing any large medium or giant bluefin, and must make the tuna available for inspection and attachment of a tag. No such large medium or giant Atlantic bluefin tuna may be sold or transferred to any person for a commercial purpose except for taxidermic purposes. A list of local NMFS enforcement offices may be obtained from the Regional Director.

(e) *Party/Charter category.* (1) For vessels permitted in the Party/Charter category and that are operating as a partyboat or charter vessel, anglers aboard such vessels are subject to the daily bag limits for school, large school, and small medium Atlantic bluefin tuna and the annual vessel limit of large medium or giant Atlantic bluefin tuna as specified in paragraph (d) of this section. The captain, mate, or crew member of a party or charter boat is not considered an angler for purposes of this section.

(2) For vessels permitted in the Party/Charter category and that are not operating as a partyboat or charter vessel, operators of such vessels are subject to the daily catch limit in effect for the General Category for large medium or giant Atlantic bluefin tuna as specified in paragraph (a) of this section and may not retain school, large school or small medium bluefin tuna. If retained, such large medium or giant bluefin tuna may be sold and are counted against the quota for the General category.

11. In § 285.25, the heading and first sentence of paragraph (d)(1) are revised to read as follows:

§ 285.25 Purse seine vessel requirements.
* * * * *

(d) *Vessel allocations.* (1) Purse seine vessel permit holders must apply for an allocation of Atlantic bluefin tuna from the quotas specified in § 285.22. * * *

12. Section 285.26 is amended by removing the phrase "tip of the snout" in the second sentence, and adding in its place the phrase "tip of the upper jaw".

13. In § 285.29 paragraphs (a) and (d) are revised to read as follows:

§ 285.29 Dealer recordkeeping and reporting.

Any person issued a dealer permit under § 285.28:

(a) Must report via an Interactive Voice Response System (IVRS) established by the Regional Director within 24 hours of the purchase or receipt of each Atlantic bluefin tuna from the person or vessel that harvested the fish. Said report via the IVRS must include the tag number affixed to the fish by the dealer, the date landed, the round and/or dressed weight (indicating which weight(s) measured), and the gear used. In addition, dealers must submit to the Regional Director a daily report on a reporting card provided by NMFS. Said card must be postmarked and mailed at the dealer's expense within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Each reporting card must be signed by the vessel permit holder or vessel operator to verify the name of the vessel that landed the fish and must show the Atlantic bluefin tuna vessel permit number, tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round and/or dressed weight (indicating which weight(s) measured), the total or pectoral fin curved fork length (indicating which length(s) measured), gear used, and area where the fish was caught.

(d) Must retain at his/her place of business a copy of each daily report (including proof of IVRS transmission) and a copy of each bi-weekly report for a period of 2 years from the date on which each was submitted to the Regional Director.

14. In § 285.31, paragraphs (a) (15), (30), (31), and (37) are revised to read as follows:

§ 285.31 Prohibitions.

(a) * * *
(15) Sell, offer for sale, or transfer to any person for a commercial purpose

any large medium or giant Atlantic bluefin tuna caught with rod and reel gear under § 285.24(d)(3);
* * * * *

(30) Fish for, catch, retain, possess or land Atlantic bluefin tuna from the Gulf of Mexico except as specified under §§ 285.23(c) and 285.24(d)(3);

(31) Fish for, catch, retain, possess or land Atlantic bluefin tuna with a gear type or in a manner other than specified in §§ 285.21, 285.22, 285.23, 285.24 and 285.25, or other than authorized under an experimental fishing exemption issued pursuant to the requirements of § 285.7;

(37) Fish for, catch, retain, possess or land any Atlantic bluefin tuna less than the large medium size class from a vessel other than one issued an Angling Category permit under § 285.21, or a Purse Seine category permit and operating under § 285.23(d).
* * * * *

15. In § 285.32, paragraph (a) is revised to read as follows:

§ 285.32 Civil penalties.

(a) Any person who violates § 285.31(a) (1) through (21) inclusive, or (a) (24) through (37), inclusive, will be assessed a civil penalty of not more than \$25,000 for a first violation and a civil penalty of not more than \$50,000 for a subsequent violation.
* * * * *

16. Subpart C, consisting of §§ 285.50 through 285.60, is revised to read as follows:

Subpart C—Yellowfin Tuna (*Thunnus albacares*) and Bigeye Tuna (*Thunnus obesus*)

Sec.

285.50	Authorized fishing gear.
285.51	Size limits.
285.52	Vessel permits.
285.53	Vessel recordkeeping and reporting.
285.54	Dealer permits.
285.55	Dealer recordkeeping and reporting.
285.56	Purse Seine vessel requirements.
285.57	Quotas.
285.58	Catch limits.
285.59	Incidental catch.
285.60	Prohibitions.

Subpart C—Yellowfin Tuna (*Thunnus albacares*) and Bigeye Tuna (*Thunnus obesus*)

§ 285.50 Authorized fishing gear.

Fishing for, catching, retention or possession of yellowfin and bigeye tuna in the regulatory area by persons aboard fishing vessels subject to the jurisdiction of the United States is authorized only for handline, rod and reel, harpoon, purse seine, longline, drift gillnet and bandit gear unless the gear is authorized

under an experimental fishing exemption issued pursuant to the requirements of § 285.7.

§ 285.51 Size limits.

(a) Fishing for, catching, retention or possession of yellowfin and bigeye tuna in the regulatory area by persons aboard fishing vessels subject to the jurisdiction of the United States is authorized only for yellowfin or bigeye tuna measuring 22 inches (56 cm) or more in total curved fork length.

(b) Total curved fork length will be the sole criterion for determining the size class of whole (head on) Atlantic yellowfin and bigeye tuna. For this purpose, all measurements must be taken in a line tracing the contour of the body along the middle of the lateral surface from the tip of the upper jaw to the fork of the tail.

§ 285.52 Vessel permits.

(a) *Permit requirements.* Each vessel that fishes for, or takes, Atlantic yellowfin or bigeye tuna must have on board a valid permit issued under this section.

(b) *Commercial vessel permits.* (1) As a prerequisite to selling Atlantic yellowfin and bigeye tunas and to be eligible for exemption from applicable bag limits, if any, specified in this subpart, an owner or operator of a vessel that fishes in the EEZ must obtain an annual vessel permit.

(2) Vessels permitted in the Party/Charter category that are not operating as party and charter boats for an individual fishing trip may operate as commercial vessels for that trip.

(c) *Recreational vessel permits.* (1) Owners or operators of party and charter boats must obtain a party/charter vessel permit in order to fish for, catch, retain or land yellowfin or bigeye tuna. Anglers aboard charter vessels and partyboats must adhere to applicable bag limits when the vessel is operating as a charter vessel or partyboat. Yellowfin and bigeye tuna taken aboard vessels operating as party or charter boats may not be sold.

(2) Effective January 1, 1996, owners or operators of private recreational vessels are required to obtain vessel permits in order to fish for, catch, retain or land yellowfin and bigeye tuna. Anglers aboard private recreational vessels must adhere to applicable bag limits. Yellowfin and bigeye tuna taken aboard private recreational vessels may not be sold.

(d) *Purse seine.* Directed purse seine fishing for Atlantic yellowfin and bigeye tunas is restricted to vessels with Atlantic bluefin tuna purse seine permits issued under § 285.21(b) and

which reported yellowfin tuna landings to NMFS over the period 1989 through 1993.

(e) *Exemptions from permit requirements.* Vessels carrying valid permits for Atlantic swordfish issued under 50 CFR part 630, Atlantic sharks issued under 50 CFR part 678, or any of the Atlantic bluefin tuna categories issued under subpart B, are exempt from the permit requirements of this section.

§ 285.53 Vessel recordkeeping and reporting.

(a) Any person in charge of a fishing vessel, or any master or other person in charge of a fishing vessel subject to the jurisdiction of the United States or any person as may be authorized in writing to serve as the agent of such person or master, must:

(1) Keep an accurate log of all operations conducted from the vessel, entering therein for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of tuna on board by species. The record and bridge log shall be sufficient to comply with this paragraph, provided however, that the items of information specified herein are fully and accurately entered in such log; and

(2) Furnish on a form obtainable from the Regional Director, following the sale or delivery of a catch of tuna made by such vessel, a report, certified to be correct as to facts within the knowledge of the reporting individual, giving the name and official number of the fishing vessel, the dates of beginning and ending of the fishing voyage, the port of departure, and a listing separately by species of the round weight quantities (pounds or short tons) of tuna sold or delivered. At the option of the vessel master or other person in charge, a copy of the fish ticket, weighout slip, settlement sheet, or similar record issued by the dealer or his agent may, however, be used for reporting purposes in lieu of the form obtainable from the Regional Director, if such alternate record is similarly certified and contains all items of information required by this paragraph. Such sale and delivery reports must be delivered or post marked and mailed to the Regional Director within 72 hours after weighout has been completed.

(b) Any person in charge of a fishing vessel or any Master or other person in charge of a fishing vessel, subject to the jurisdiction of the United States, except vessels proceeding directly to Puerto Rico or to any other U.S. port for unloading, must report to the Regional Director not less than 48 hours prior to entering the regulatory area via the

Panama Canal. In addition, any person in charge of a fishing vessel or any Master or other person in charge of a vessel, subject to the jurisdiction of the United States except a vessel without fish on board, must notify the Regional Director not less than 48 hours prior to leaving the regulatory area via the Panama Canal. Each report must include the name of the reporting vessel, the tonnage by species on board, and whether the fish were caught in Pacific or Atlantic waters.

(c) All such fishing vessels entering or leaving the regulatory area via the Panama Canal are subject to inspection. Official seals will be affixed to wells containing fish taken within or outside the regulatory area, as appropriate and the same will be noted on the vessel log. The official seals may be removed only by a designated agent of the NMFS upon the arrival at point of sale or delivery.

(d) Any person in charge of a fishing vessel or any Master or other person in charge of a fishing vessel subject to the jurisdiction of the United States, must notify the Regional Director not less than 48 hours prior to any transfer of yellowfin tuna or bigeye tuna taken in the regulatory area to another vessel for the purpose of transshipment. Such reports must include the date and place of unloading, name and destination of the oncarrying vessel, and the tonnage by species of tuna transferred.

(e) The failure to file the reports or to follow the procedures required by this section, the tampering with or the removal of an official seal, or the alteration of a fishing vessel's log by any person or fishing vessel subject to the jurisdiction of the United States is a prohibited act within the meaning of § 285.3.

(f) Any person authorized to carry out enforcement activities under the Act or the regulations in this subpart has power, without warrant or other process, to inspect, at any reasonable time, catch on board the vessel, log books, catch reports, statistical records, or other reports as required by the regulations in this part to be made, kept or furnished.

§ 285.54 Dealer permits.

(a) *General.* A dealer purchasing, receiving, possessing, importing or exporting Atlantic yellowfin or bigeye tuna must have a valid permit required under this section.

(b) *Application.* Applications for a dealer permit must be in writing on an appropriate form obtained from the Regional Director. The application must be signed by the applicant, and be submitted to the Regional Director at least 30 days before the date upon

which the applicant desires the permit to be effective. The application must contain the following information: Company name; principal place of business; owner or owners' names; applicant's name (if different from owner or owners) and mailing address and telephone number; and any other information required by the Regional Director.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* Any permit issued under this section remains valid until December 31 of the year for which it is issued, unless suspended or revoked.

(e) *Alteration.* Any permit which is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* The Regional Director may issue replacement permits. An application for a replacement permit is not considered a new application.

(g) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the dealer to whom it is issued.

(h) *Inspection.* The dealer must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by the Regional Director for such purpose.

(i) *Sanctions.* The Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* The Regional Director may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 15 days after any

change in the information contained in an application submitted under this section, the dealer issued a permit will report the change in writing to the Regional Director.

(l) *Exemptions from permit requirements.* Dealers holding valid dealer permits for Atlantic swordfish issued under 50 CFR part 630, Atlantic sharks issued under 50 CFR part 678, or Atlantic bluefin tuna issued under subpart B, are exempt from the permit requirements of this section.

§ 285.55 Dealer recordkeeping and reporting.

(a) A dealer who has been issued a dealer permit pursuant to § 285.54 must submit a report to the Fisheries Science Center Director as specified in paragraph (b) of this section. A report form is available from the Science and Research Director. The following information must be included in each report:

(1) Name, address, and permit number of the dealer.

(2) Names and official numbers of fishing vessels from which yellowfin and bigeye tuna were received.

(3) Dates of receipt of yellowfin and bigeye tuna.

(4) Listed by each port and county where yellowfin and bigeye tuna were offloaded from fishing vessels:

(i) Total weight (pounds) by market category for tuna, if applicable, and for other species received with the tuna, including, but not limited to, shark, swordfish, yellowfin tuna, bigeye tuna, and albacore; and

(ii) Price per pound or total value paid by market category for tuna and other species, to the extent that such price information is known at the time of reporting.

(b) A report of tuna and other applicable species received by a dealer on the first through the 15th days of each month must be submitted to the Science and Research Director postmarked not later than the 20th day of that month. A report of tuna and other applicable species received by the dealer on the 16th through the last day of each month must be submitted to the Science and Research Director postmarked not later than the 5th day of the following month. If no tuna was received during the reporting period, a report so stating must be submitted postmarked as specified for that respective reporting period.

(c) The reporting requirement of paragraph (a) of this section may be satisfied by providing a copy of each appropriate weigh-out sheet and/or sales record, provided such weigh-out sheet and/or sales record, by itself or

combined with the form available from the Science and Research Director, includes all of the required information.

(d) In lieu of providing a required report to the Science and Research Director by mail, as specified in paragraph (a) of this section, a dealer may provide a report to a state or Federal fishery port agent designated by the Science and Research Director. Reports so provided must be delivered to such port agent not later than the prescribed postmark date for submitting each such report.

(e) *Additional data and inspection.* Additional data may be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. Dealers are required to make tuna available for inspection by the Science and Research Director or an authorized officer and must allow an authorized officer, or any employee of NMFS designated by the Regional Director for this purpose, to inspect and copy any records of transfers, purchases, or receipts of Atlantic yellowfin and bigeye tuna;

(f) *Recordkeeping.* Dealers must retain at their place of business a copy of each bi-weekly report for a period of 2 years from the date on which each was submitted to the Regional Director.

§ 285.56 Purse seine vessel requirements.

(a) *Mesh size.* Any owner or operator of a purse seine vessel conducting a directed fishery for Atlantic yellowfin and bigeye tunas must use a purse seine net with a mesh size as specified under § 285.25(a).

(b) *Inspection.* Any owner or operator of a purse seine vessel conducting a directed fishery for Atlantic yellowfin and bigeye tunas must request an inspection of the vessel and fishing gear by an enforcement agent of NMFS before commencing any fishing trip that may result in the harvest of any regulated species and before offloading any Atlantic yellowfin and bigeye tuna. The vessel owner must request such inspection at least 24 hours before commencement of a fishing trip and offloading by calling 508-563-5721 or 508-281-9261. Purse seine vessel owners must have their catch information recorded on the appropriate forms at the time of offloading and prior to transporting said tuna from the area of offloading.

(c) *Vessel allocations.* (1) Purse seine vessel permit holders must apply for an allocation of Atlantic yellowfin tuna from the quotas specified in this subpart. The permit holder must apply for this allocation in writing to the Regional Director by April 15. Such

request for allocation must be made in conjunction with a request for Atlantic bluefin tuna quota allocation as specified under § 285.25(d).

(2) The Regional Director will review applications for allocations of Atlantic yellowfin tuna on or about May 1, and will make equal allocations of the quota among the purse seine vessels that requested an allocation for that . Yellowfin tuna allocations issued to purse seine vessels are freely transferable, in whole, to other Atlantic tuna vessel permit holders, including vessels other than purse seine vessels. Any purse seine vessel permit holder intending to transfer its allocation of yellowfin tuna in any fishing season must provide written notice of such intent to the Regional Director 15 days before commencing fishing in that season. Purse seine vessel permit holders who transfer their yellowfin tuna allocation must not fish their permitted vessel in any fishery in which Atlantic yellowfin tuna might be caught. If an Atlantic bluefin tuna purse seine allocation is transferred pursuant to § 285.25(d)(2), any yellowfin tuna allocation applicable to that purse seine vessel must not be fished, but may be transferred to another eligible vessel.

§ 285.57 Quotas.

The Assistant Administrator shall specify fishing quotas for yellowfin and bigeye tuna as necessary to implement the management recommendations of ICCAT.

(a) *Yellowfin tuna*. The total annual (January 1–December 31) amount of Atlantic yellowfin tuna that may be caught, retained, possessed or landed by persons and vessels subject to U.S. jurisdiction in the regulatory area is subdivided as follows:

(1) *Purse Seine*. The total annual amount of yellowfin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the Purse Seine category under § 285.52(d) is 350 mt.

(2) *Other gear*. The total annual amount of Atlantic yellowfin tuna that may be caught, retained, possessed or landed by persons and vessels subject to U.S. jurisdiction in the regulatory area using gear authorized under § 285.50 other than purse seines is not subject to a quota.

(b) *Bigeeye tuna*. The total annual (January 1–December 31) amount of Atlantic bigeye tuna that may be caught, retained, possessed or landed by persons and vessels subject to U.S. jurisdiction in the regulatory area is not subject to a quota.

§ 285.58 Catch limits.

The Assistant Administrator shall specify catch limits for commercial and recreational fisheries as necessary to implement the management recommendations of ICCAT and to achieve domestic fishery management objectives. Persons aboard vessels permitted under this part may possess yellowfin and bigeye tuna in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit in effect at that time. The captain, mate, or crew member of a party or charter boat is not an angler for purposes of this section. When not operating as a party or charter boat, persons aboard vessels permitted in the Party/Charter category are exempt from the daily catch limit.

(a) *Yellowfin tuna*. Anglers aboard vessels permitted in the Angling category or Party/Charter category may catch and retain each day no more than ten Atlantic yellowfin tuna.

(b) *Bigeeye tuna*. Unless adjusted pursuant to paragraph (c) of this section, anglers aboard vessels permitted in the Angling category or Party/Charter category may catch and retain each day an unlimited number of bigeye tuna.

(c) *Adjustments to catch limits*. The Assistant Administrator may increase or decrease the daily catch limit for yellowfin or bigeye tuna, based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota, if applicable. The Assistant Administrator will publish a notice in the **Federal Register** of any adjustment in the catch limit made under this paragraph. Such notice shall be published at least 7 calendar days prior to a change in daily catch limit becoming effective.

§ 285.59 Incidental catch.

Persons or fishing vessels subject to the jurisdiction of the United States must release, in a manner to promote survival, any yellowfin tuna or bigeye tuna less than the minimum size specified in § 285.51 taken incidental to authorized fishing in the regulatory area.

§ 285.60 Prohibitions.

(a) It is unlawful for any person or vessel subject to the jurisdiction of the United States to do any of the following:

- (1) Fish for, catch, possess, or land Atlantic yellowfin or bigeye tuna without a valid permit required under § 285.52 and carried on board the vessel;
- (2) Fish for, catch, land, or possess Atlantic yellowfin or bigeye tuna in excess of the catch limits specified in

§ 285.58 or below the minimum size specified in § 285.51;

(3) Fish for or catch Atlantic yellowfin or bigeye tuna in a directed fishery with purse seine nets in excess of an allocation made under § 285.56(c) or if without any remaining bluefin tuna allocation made under § 285.25(d);

(4) For any vessel other than a vessel holding a purse seine permit issued under § 285.52(d), to approach to within 100 yd (91.5 meters) of the cork line of any purse seine net used by any vessel fishing for Atlantic yellowfin or bigeye tuna, or for any such purse seine vessel to approach to within 100 yd (91.5 meters) of any vessel, other than a purse seine vessel, fishing for Atlantic yellowfin or bigeye tuna;

(5) Fail to release immediately with a minimum of injury any Atlantic yellowfin or bigeye tuna that will not be retained;

(6) Begin fishing or offloading from any purse seine vessel to which a permit has been issued under § 285.21 any Atlantic yellowfin or bigeye tuna without first requesting an inspection of the vessel in accordance with § 285.25;

(7) Fail to report the catching of any Atlantic yellowfin or bigeye tuna to which a plastic tag has been affixed under a tag and release program conducted by NMFS or any other scientific organization;

(8) Falsify or fail to make, keep, maintain, or submit any reports, or other record required by this subpart;

(9) Refuse to allow an authorized officer to make inspections for the purpose of checking any records relating to the catching, harvesting, landing, purchase, or sale of any Atlantic yellowfin or bigeye tuna required by this subpart;

(10) Make any false statement, oral or written, to an authorized officer concerning the catching, harvesting, landing, purchase, sale, or transfer of any Atlantic yellowfin or bigeye tuna;

(11) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by this part;

(12) Refuse to permit access of NMFS personnel to inspect any records relating to, or area of custody of, Atlantic yellowfin or bigeye tuna.

(b) It is unlawful for any person subject to the jurisdiction of the United States to violate any other provision of this subpart, the Act, or any other rules implemented under the Act.

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